

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

GLICERIO D. RAMIREZ,)	No. CV-F-05-046 REC
)	
)	OPINION AFFIRMING BANKRUPTCY
)	COURT
Appellant,)	
)	
vs.)	
)	
COUNTY OF SAN BERNARDINO,)	
)	
)	
Appellee.)	
)	
)	

On January 3, 2005, appellant/debtor/plaintiff Glicerio D. Ramirez filed a notice of appeal in the Bankruptcy Court, appealing the Judgment in favor of the County of San Bernardino, appellee/defendant, in Adversary Proceeding No. 02-1368, Bankruptcy Case No. 99-11612-B-13, entered on December 23, 2004.¹

The parties submit this appeal on their papers and without

¹The County argues that this appeal should be dismissed as untimely. The County's position is without merit. Pursuant to the calculation of time set forth in Rule 9006(a), Bankruptcy Rules, the Notice of Appeal was filed on the tenth day after the entry of judgment and, therefore, was filed within the ten day period set forth in Rule 8002(a).

1 oral argument.

2 The court hereby affirms the judgment of the Bankruptcy
3 Court for the reasons set forth herein.

4 A. Statement of Issues on Appeal and Standard of Review.

5 Debtor raises the following issues in this appeal:

6 1. Whether or not the County of San
7 Bernardino has breached the 'Settlement
8 Agreement'.

9 2. Whether or not the 'Tax Deed Rescission'
10 is void and/or unenforceable on the basis
11 that the Bankruptcy Court has already ruled
12 and found that the 'Tax Sale' of Lot 03 is
13 void.

14 3. Whether or not the Bankruptcy Court has
15 abused its discretion and authority by
16 creating and enforcing provisions of the
17 Settlement Agreement other than the written
18 provisions of the Settlement Agreement agreed
19 upon and/or contemplated by the parties.

20 This court reviews the bankruptcy court's findings of fact
21 under a clearly erroneous standard and reviews its conclusions of
22 law de novo. In re Windmill Farms, 841 F.2d 1467, 1469 (9th Cir.
23 1988). As long as findings are plausible in light of the record
24 viewed in its entirety, a reviewing court may not reverse even if
25 convinced it would have reached a different result. Wardley
26 Int'l Bank, Inc. v. Nasipit Bay Vessel, 841 F.2d 259, 262 n.1
(9th Cir. 1988). The interpretation of a contract and the
determination as to its breach are a mixed question of fact and
law. Libby, McNeill, and Libby v. City Nat'l Bank, 592 F.2d 504,
512 (9th Cir. 1978). In general, factual findings as to what
the parties said or did are reviewed under the clearly erroneous

1 standard while principles of contract interpretation applied to
2 the facts are reviewed de novo. Id. As explained in L.K.
3 Comstock & Company, Inc. v. United Engineers & Constructors Inc.,
4 880 F.2d 219, 221 (9th Cir. 1989):

5 It is clear that when a district court
6 interprets a contract without using extrinsic
7 evidence, the standard of review is de novo.
8 But:

9 [w]hen the inquiry focuses on
10 extrinsic evidence of related
11 facts, ... the trial court's
12 consideration of extrinsic evidence
13 will not be reversed unless they
14 are clearly erroneous.

15 ... Thus, if the contract interpretation
16 includes a review of factual extrinsic
17 evidence, the findings of fact themselves are
18 reviewed under the 'clearly erroneous'
19 standard ..., but the principles of contract
20 law applied to those facts are reviewed de
21 novo.

22 B. Rescission of Tax Deed Void.

23 Debtor argues that the "Rescission of Tax Deed to Purchaser
24 of Tax-Defaulted Property" recorded on September 24, 2002 is
25 void. Debtor contends that, because the Bankruptcy Court had
26 ruled that the sale of Parcel 03 by the County to Baldy Mesa was
27 void:

28 [T]herefore, it follows that the Tax Deed is
29 also void; and since the Tax Deed is void,
30 there was nothing to rescind, and therefore,
31 the Tax Deed Rescission is a moot and void
32 document.

33 The purpose for this argument is unclear. However, when
34 Parcel 03 was improperly sold by the County to Baldly Mesa, a
35 deed was recorded transferring title to Parcel 03 to Baldly Mesa.

1 In order to remove that transfer from the chain of title, the
2 County had to rescind that deed. Therefore, even though the sale
3 of the property by the County to Baldy Mesa was void and did not
4 legally transfer title to Baldy Mesa, absent the recording of the
5 Rescission of Tax Deed to Purchaser of Tax-Defaulted Property,
6 the record of title would still reflect ownership of Parcel 03 by
7 Baldy Mesa.

8 Consequently, the argument that the Rescission of Tax Deed
9 "is a moot and void document" is without merit and the Bankruptcy
10 Court's ruling is affirmed.

11 C. Settlement Agreement Void or Unenforceable.

12 Debtor argues that paragraph 6 of the Settlement Agreement
13 is void and unenforceable because "Parcel 03 title remains in the
14 name of the Debtor and spouse after the Bankruptcy Court has
15 ruled that the Tax Sale is void and that neither the County or
16 Baldy Mesa Water District never had the title to Parcel 03 to
17 convey to the Debtor."

18 Paragraph 6 of the Settlement Agreement provided:

19 San Bernardino agrees to prepare and execute
20 all necessary documents, within ninety days
21 (90) so that the title to the Property
remains in the name of the Debtor,
effectively negating the Transfer.

22 Again, for the reasons set forth above, Debtor's argument on
23 appeal is without merit. Because the County had recorded a deed
24 transferring Parcel 03 to Baldy Mesa, the County had to execute
25 and record the Rescission of Tax Deed in order to correct the
26 record of title. Therefore, the fact that the Bankruptcy Court

1 previously ruled that the sale of Parcel 03 to Baldy Mesa was
2 void does not void or make unenforceable Paragraph 6 of the
3 Settlement Agreement.

4 Debtor argues that "the Bankruptcy Court has violated its
5 own Order by ruling that it has jurisdiction to hear the matter
6 instead of requiring the matter be heard by an appropriate court
7 in Los Angeles County; and by applying Federal laws instead of
8 State laws, as per the provisions of Item 18, of the Settlement
9 Agreement."

10 Paragraph 18 of the Settlement Agreement provides:

11 This Agreement shall in all respects shall
12 [sic] be interpreted, enforced and governed
13 by and under the laws of the State of
14 California. Any action brought to enforce
the provisions of this Agreement shall be
commenced in Los Angeles County, California,
in the appropriate court of jurisdiction.

15 This argument was not presented to the Bankruptcy Court. In
16 fact, the Excerpt of Record submitted by Debtor establishes that
17 Debtor alleged and argued that jurisdiction of this Adversary
18 Proceeding was properly in the Bankruptcy Court, a position
19 accepted by the Bankruptcy Court. Consequently, the court
20 concludes that Debtor is judicially estopped from now arguing
21 that the Bankruptcy Court did not have jurisdiction to hear this
22 Adversary Proceeding because of Paragraph 18 of the Settlement
23 Agreement. Furthermore, it is clear from the record in this
24 action that the Bankruptcy Court applied California law to
25 resolve the issues where appropriate. This ground for appeal is
26 therefore denied.

Debtor further argues:

[T]he Settlement Agreement should be treated as a contract because it is 'of a nature to produce a binding result on the mutual relations of the parties', therefore, the aforementioned circumstances together with the dismissal of the first and third claims for relief imposed by the Agreement Order [see 'EXHIBIT B' of Tab 2 of TAB Z of Excerpts] not contemplated by the parties in the Settlement Agreement or Contract de facto constitute illegal interference with the Settlement Agreement or Contract and creation of provisions of the Settlement Agreement or Contract by the Bankruptcy Court for the parties.

This ground for appeal makes little, if any, sense. The County asserts in its brief that it "cannot understand what the illegal interference is", that the argument "is unintelligible and without a specific argument on the illegal interference, appellant cannot respond." Debtor does revisit this assertion in his reply brief. It appears that Debtor is contending that the construction of the Settlement Agreement and the ruling by the Bankruptcy Court constitutes illegal interference by the Bankruptcy Court. If that is Debtor's position, it is without merit. The Bankruptcy Court was required to resolve the issues before it in the Adversary Proceeding. That Debtor does not like the resolution cannot constitute illegal interference by the Bankruptcy Court. Otherwise, the court agrees with the County that this ground for appeal is unintelligible and it is denied.

D. Breach of Settlement Agreement.

Debtor argues that the County breached Paragraph 6 of the Settlement Agreement because the County did not execute the

1 Rescission of Tax Deed within 90 days as required by Paragraph 6.

2 Debtor asserts in his reply brief:

3 ... [T]he County has untimely executed [119
4 days from the approval [of] the Settlement
5 Agreement] the 'unnecessary document'
6 [Rescission Deed.]

7 The same provisions do not specify the exact
8 method of transfer to Debtor but specifically
9 states 'Necessary Document' It has been
10 established ... that the Rescission Deed is
11 an unnecessary document; and if this is true,
12 then what is the necessary document? A grant
13 deed and a quitclaim deed are also
14 unnecessary documents because neither the
15 County or Baldy Mesa Water District has the
16 title to transfer Parcel 03 to Debtor. The
17 only remaining viable method of transfer is a
18 tax deed. The County has the authority to
19 issue a tax deed to Debtor because it has the
20 power to sell properties which have tax
21 liabilities that were delinquent for more
22 than 5 years; and a owner of a tax delinquent
23 property may be issued a tax deed on that
24 property. Due to the fact that the County
25 failed to timely execute a necessary document
26 for the transfer of Parcel 03 to Debtor as
27 manifested above, the County has breached the
28 Settlement Agreement.

29 Debtor's argument is not only inconsistent with the position
30 taken above but it is incorrect. As Debtor has argued, the
31 Bankruptcy Court ruled that the sale of Parcel 03 to Baldy Mesa
32 was void. The County issued the Rescission of Tax Deed pursuant
33 to the terms of the Settlement Agreement, not to transfer title
34 from Baldy Mesa back to Debtor, but to negate the transfer of
35 Parcel 03 to Baldy Mesa, thereby leaving title to Parcel 03 as it
36 was prior to the tax sale to Baldy Mesa.

37 Furthermore, as the Bankruptcy Court ruled, it does not
38 matter when the Rescission of Tax Deed was recorded so long as

1 Debtor was not prejudiced by the timing. As the Bankruptcy Court
2 further concluded, actual damages are an essential element of a
3 breach of contract claim and Debtor offered no evidence that he
4 incurred any actual damages resulting from the delay in recording
5 the Rescission of Tax Deed.

6 Debtor argues that the Bankruptcy Court erred in concluding
7 that the County did not waive or release its claim for
8 prepetition property taxes in the amount of \$5,018.00.

9 The Bankruptcy Court ruled in pertinent part:

10 The waiver and release issue is a little more
11 problematic. When the County rescinded the
12 Tax Deed, and refunded the \$5,018 to Baldy
13 Mesa, that effectively reinstated the
14 County's prepetition tax assessment against
15 Parcel 03. The Debtor contends, based on the
16 release language in paragraphs 4 & 5 of the
17 Settlement Agreement, that the County waived
18 and released those taxes. The court
19 disagrees.

20 Paragraph 4 of the Settlement Agreement is
21 ambiguous, it purports to release 'all claims
22 ... whether by law, equity, statutes or
23 regulations, *relating to the proposed project*
24 *[sic] described above.'* The ambiguity lies
25 in the misstatement 'proposed project [sic]
26 described above.' There is no 'project'
described in the first three paragraphs of
the Settlement Agreement. To interpret the
meaning of paragraph 4, the court must
therefore look to applicable law and other
provisions of the Settlement Agreement.

22 The taxation of real property is mandated by
23 the California Constitution, Art. XIII, § 1.
24 Under California law, the County Tax
25 Collector has a duty to collect real property
26 taxes when the defaulted taxes have not been
redeemed for five years or more. Cal.Rev.&T.
Code § 1391(a). The Debtor offers no
authority for the proposition that the County
can waive its statutory duty, even if it had

1 intended to do so in the settlement
2 negotiations.

3 Turning now to the Settlement Agreement
4 itself, the preamble paragraph states, 'This
5 settlement agreement *solely deals with the*
6 *transfer* of the [Parcel 03] real property
7 described below.' (Emphasis added).
8 Paragraph 5 of the Settlement Agreement is
9 consistent with the preamble in its
10 limitation of the scope of the Agreement: 'It
11 is the intention of each of the parties to
12 fully, finally and forever release all such
13 matters, and all claims *relating to the*
14 *transfer* of the real property, described
15 above.' (Emphasis added). Based on a
16 reading of the whole Settlement Agreement,
17 the court concludes that the release term
18 only applies to claims related to the
19 improper Tax Sale. The court notes again,
20 that the Tax Sale was always a void act. The
21 underlying property taxes were assessed long
22 before the Tax Sale, they were not caused by
23 the Tax Sale and they were not affected by
24 the Tax Sale.

25 The court must also construe the Settlement
26 Agreement in the context of the Prior
Litigation in which the Baldy Mesa Settlement
originated. In the Prior Litigation, the
Debtor alleged that the Tax Sale was a
willful and malicious violation of the
automatic stay justifying an award of
punitive damages (first claim for relief) and
that he was entitled to reimbursement for
postpetition taxes paid on Parcel 03 after
the Tax Sale (third claim for relief). The
Baldy Mesa Settlement resolved only those
issues. The Debtor has never before disputed
the underlying property taxes for Parcel 03.
The Prior Litigation was not about the
underlying taxes, it was about the Tax Sale
and the County's Claim for penalties and
interest. But the Debtor does not seek an
interpretation of the Settlement Agreement
with regard to only penalties and interest,
he demands an order of this court which
effectively cancels all of the underlying
prepetition taxes and the associated tax lien
against Parcel 03. Such a ruling would far
exceed any reasonable interpretation of the

1 Settlement Agreement.

2 Based on the foregoing, the court finds that
3 the Baldy Mesa Settlement only released
4 claims relating to and arising from the
5 erroneous Tax Sale of Parcel 03. It did not
6 waive or release the underlying property tax
7 assessment, the penalties or the interest.
8 The County having properly rescinded the Tax
9 Deed to Baldy Mesa, and having refunded Baldy
10 Mesa's money, may now recover the prepetition
11 taxes for Parcel 03 through the Debtor's
12 chapter 13 plan.

13 Debtor contends that this construction of the Settlement
14 Agreement is erroneous:

15 The \$5,018.00 is claim related to the
16 transfer of Parcel 03. As a result of the
17 transfer of Parcel 03 to Baldy Mesa Water
18 District, the County required Baldy Mesa
19 Water District to pay the \$5,018.00 real
20 estate tax liability. When the \$5,018.00 was
21 returned to the County by Baldy Mesa ..., it
22 became a claim against Debtor, therefore,
23 said claim must be released by the County for
24 compliance with Item 5 of the Settlement
25 Agreement.

26 Because it does not appear that the Bankruptcy Court
construed this aspect of the Settlement Agreement with reference
to any extrinsic evidence, the court's review of the Bankruptcy
Court's ruling is de novo.

Utilizing de novo review, the Bankruptcy Court is affirmed.
Nothing in the language of the Settlement Agreement purports to
release any claim that the County has against Debtor for
prepetition property taxes owed on Parcel 03. The Settlement
Agreement only releases all claims resulting from the improper
transfer by the County of Parcel 03 to Baldy Mesa. The
prepetition real property taxes are not a claim resulting from

1 that transfer. As the Bankruptcy Court noted, those property
2 taxes predated by several years the improper transfer of Parcel
3 03 and did not result from that transfer. Consequently, Debtor's
4 argument that the County has breached the Settlement Agreement by
5 continuing to seek the prepetition property taxes on Parcel 03 is
6 without merit and the Bankruptcy Court's conclusion is affirmed.

7 IT IS SO ORDERED.

8 **Dated: May 4, 2005**
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE